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10/590,394

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EXAMINER

WALKER, NED ANDREW

ART UNIT

PAPER NUMBER

3781

MAIL DATE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/590,394	Applicant(s) MERKER ET AL.	
	Examiner NED A. WALKER	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 May 2009 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings were received on May 6th, 2009. These drawings are not acceptable.
2. The drawings are not accepted because FIGS. 1, 2B, 3, and 4 contain new matter. Refer to the Response to Amendment section below for further explanation.
3. New corrected drawings in compliance with 37 CFR 1.83, 37 CFR 1.84 and 37 CFR 1.121 are required in this application because:

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "a support" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

4. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter (37 CFR 1.75(d)(1) and MPEP §608.01(o)). Correction of the following is required: the amendment filed May 6th, 2009 comprises the limitation "a roll of the rolling blind supported by the at least one bearing *for rotation* about a longitudinal axis" (emphasis added) in line 6 of the newly added Claim 8.

Applicant is required to cancel the new matter in the reply to this Office Action.

6. The amendment filed January 14th, 2010 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the amendment to paragraph [0018] comprising the language "The bearings 5 also support the rolling blind *for rotation* about the longitudinal axis" (emphasis added); the amendment to paragraph [0023] comprising the language "(shown schematically)"; the amendment to paragraph [0024] comprising the language "shown schematically in"; the amendment to paragraph [0025] comprising the language "schematically".

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Objections

7. Claim 8 is objected to because of the following informalities: a reference number is missing required parentheses. Claim 8, line 6, recites "axis 20" and requires correction to "axis (20)". Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claim 8 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the amendment filed May 6th, 2009 comprises the limitation "a roll of the rolling blind supported by the at least one bearing *for rotation* about a longitudinal axis" (emphasis added) in line 6 of the newly added Claim 8. The Examiner could not find support for this limitation in the originally filed disclosure.

10. Claim 8 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, the amendment filed May 6th, 2009 comprises the limitation "a roll of the rolling blind supported by the at least one bearing *for rotation* about a longitudinal axis"

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(emphasis added) in line 6 of the newly added Claim 8 is not enabled by the specification.

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitations "the rolled-up state" and "the inoperative position" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claims 2-7 are rejected for incorporating the errors from their respective parent claim by dependency.

Notes

13. Note 1: Since a specific or technical definition for the term **bearing** is absent from the Applicant's disclosure, the term has been given its broadest reasonable interpretation consistent with the specification. (See MPEP 2111; Phillips v. AWH Corp., 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). As such, the *Merriam-Webster Online Dictionary* defines **bearing** as "an object, surface, or point that supports". The Examiner has thereby applied the prior art below within this context.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 1-3, 8-10, and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto (PTO 09-7245: English Human Translation of JP Pat. No. 2001123766).

16. Please note the Examiner has furnished a copy of a new human translation of Japanese Pat. No. 2001123766 by Yamamoto into the English language, which is attached as PTO 09-7245. This document has been deemed by the Office to be the English equivalent of JP Pat. No. 2001123766 and is afforded the corresponding priority date of the Japanese reference. The English Human Translation PTO 09-7245 will be the reference referred to herein.

Yamamoto discloses a refrigerated cabinet (FIG. 1) comprising at least one rolling night blind (6) and a goods compartment (1) having at least one goods compartment opening (A) adapted to be closed by means of the at least one rolling night blind in an operative position thereof (FIG. 1), the at least one rolling night blind held in the rolled-up state in the inoperative position thereof (FIG. 2), characterized in that a support (4, 5) of the at least one of the rolling night blinds comprises at least one loose bearing (7) in a groove-like recess (13) of an upper front portion of the refrigerated cabinet (FIG. 2) and the at least one of the rolling night blinds loosely rests on, or is supported by, the at least one loose bearing (FIGS. 1-2) so as to permit a sliding motion of the at least one of the rolling night blinds along a longitudinal axis (FIGS. 1-2; the blind 6 is capable of passing along – no direction defined here so sufficiently broad

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enough to include any direction – the longitudinal axis of the shaft 8 when pulled) of a blind carrier shaft (8) and for rotation about a longitudinal axis (axis of 9) and to permit rolling up and unrolling of the rolling blind from the roll/support (FIGS. 1-2); wherein the at least one rolling night blind is two or more rolling night blinds (see second instance of 6 on right side of FIG. 1) characterized in that the rolling night blinds, at least at adjoining side portions thereof, have means (19, 20) including adhesive tape, hook-and-loop-type closure, or zip fastener for connecting the rolling night blinds (FIGS. 1, 3).

Claim Rejections - 35 USC § 103

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

19. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

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were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

20. Claims 1-3, 8-10, and 12-14 are rejected under 35 U.S.C. 103(a) as being obvious over Styles (US Pat. No. 4,801,180) in view of Schmidt (US Pat. No. 1,681,016).

Styles discloses a refrigerated cabinet (2, 50) comprising at least one rolling night blind (14, 54) and a goods compartment (6) having at least one goods compartment opening (4) adapted to be closed by means of the at least one rolling night blind in an operative position thereof (FIGS. 1-2, 5, 7), the at least one rolling night blind held in the rolled-up state in the inoperative position thereof (column 4 lines 33-43), the at least one rolling night blind having a support (16) located in an upper front portion of the refrigerated cabinet (FIGS. 2, 7); wherein the at least one rolling night blind (54) is two or more rolling night blinds (56, 58, 60, 62) characterized in that the rolling night blinds, at least at adjoining side portions thereof, have means (64, 66, 68) including adhesive tape, hook-and-loop-type closure, or zip fastener for connecting the rolling night blinds (FIGS. 5, 6).

Styles does not disclose that the support of the at least one of the rolling night blinds comprises at least one loose bearing in a groove-like recess of an upper front portion of the refrigerated cabinet and the at least one of the rolling night blinds loosely

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rests on, or is supported by, the at least one loose bearing so as to permit a sliding motion of the at least one of the rolling night blinds along a longitudinal axis of a blind carrier shaft and for rotation about a longitudinal axis and to permit rolling up and unrolling of the rolling blind from the roll/support.

Schmidt teaches that the support (1) of at least one rolling night blinds (A) comprises at least one loose bearing (2) in a groove-like recess (bottom recess portion of 1) and the at least one of the rolling night blinds loosely rests on, or is supported by, the at least one loose bearing (FIG. 2) so as to permit a sliding motion of the at least one of the rolling night blinds along a longitudinal axis (column 2 lines 39-41; FIGS. 1-2) of a blind carrier shaft (FIG. 1) and for rotation about a longitudinal axis and to permit rolling up and unrolling of the rolling blind from the roll/support (FIGS. 1-2). Schmidt also teaches the purpose of this bearing configuration is to distribute pressure points against the rolling night blind and thus distribute the wear and tear of the rolling night blind (column 1 lines 33-38).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the loose bearing structure into the design of Styles so as to allow for an evenly distributed wear and tear of the rolling night blind as taught by Schmidt.

21. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being obvious over Yamamoto (JP Pat. No. 2001123766) in view of Eming (US Pat. No. 5,171,076).

Yamamoto discloses substantially all the limitations of the claims except for wherein the at least one rolling night blind has holes and is perforated in different

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manner in different portions across the area thereof; formed with said holes in the upper portion thereof only; the holes are formed by perforating the night covering and/or by the material chosen for the night covering.

Eming teaches wherein the at least one rolling night blind has holes (25) and is perforated in different manner in different portions across the area thereof (FIG. 7); formed with said holes in the upper portion thereof only (FIG. 7); the holes are formed by perforating the night covering and/or by the material chosen for the night covering (FIG. 7).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate holes in the blind so that proper ventilation or temperature control can be maintained while defrosting, cooling, or heating.

Response to Amendment

22. The amendment filed January 14th, 2010 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the amendment to paragraph [0018] comprising the language "The bearings 5 also support the rolling blind *for rotation* about the longitudinal axis" (emphasis added); the amendment to paragraph [0023] comprising the language "(shown schematically)"; the amendment to paragraph [0024] comprising the language "shown schematically in"; the amendment to paragraph [0025] comprising the language "schematically".

Applicant is required to cancel the new matter in the reply to this Office Action.

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23. The amendment filed May 6th, 2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention.

The added material which is not supported by the original disclosure is as follows:

Specification Description

- The amendment to paragraph [0017], denoting “an open front cabinet”.
The original disclosure makes no mention of the term “open front cabinet” nor is the disclosed cabinet described as being “open front”.

Drawings

- The Replacement Drawing Sheet, FIG. 1, goods compartment opening feature (14). The obscure space below the rolling blind (1) is now identified as the goods compartment opening (14); however, the Examiner contends that this is new matter since the disclosure did not provide for this particular location, design, and relationship to surrounding features, as it is currently illustrated.
- The Replacement Drawing Sheet, FIGS. 1-2, and New Drawing Sheet, FIGS. 3-4, longitudinal axis (20). Identifying the longitudinal axis (20) as the part that was previously only identified as the blind carrier shaft (4) constitutes new matter since the original disclosure did not set forth this definition or orientation of the axis. The axis could have been defined and illustrated in numerous different directions.

- The Replacement Drawing Sheet, FIG. 2, and New Drawing Sheet, FIGS. 3-4, means for connecting feature (30). The structure of the means for connecting (30) feature now includes two additional dotted lines that were not previously present in the drawings nor were they described or identified in the original disclosure.
- The New Drawing Sheet, FIGS. 3-4, the perforations (40) feature. The Examiner contends that this is new matter since the disclosure did not provide for this particular location, design, and relationship to surrounding features, as it is currently illustrated.
- The New Drawing Sheet, FIGS. 3-4, the upper portion, 42, and lower portion, 44, features. The Examiner contends that this is new matter since the disclosure did not provide for this particular location or size of the illustrated portions, as it is currently illustrated.

Claims

- The newly added claim 8, line 6, recites the limitation “a roll of the rolling blind supported by the at least one bearing *for rotation* about a longitudinal axis” (emphasis added). The original disclosure makes no mention of the rotation function nor is it discussed how the bearing provides the functional use of rotation about a longitudinal axis.

Applicant is required to cancel the new matter in the reply to this Office Action.

24. The amendment filed January 14th, 2010 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no

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amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the amendment to paragraph [0018] comprising the language "The bearings 5 also support the rolling blind *for rotation* about the longitudinal axis" (emphasis added).

Applicant is required to cancel the new matter in the reply to this Office Action.

Response to Arguments

25. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NED A. WALKER whose telephone number is (571)270-3545. The examiner can normally be reached on Mon. - Fri. 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony Stashick/
Supervisory Patent Examiner, Art
Unit 3781

NW